	Case	2:11-cv-0/298-FMO-VBK Document 1 File	ed 09/02/11 Pag	Page ID #:1	Y			
	1	Byron Z. Moldo (SBN 109652) bmoldo@ecjlaw.com		ZOII SEP				
	2	ERVIN COHEN & JESSUP LLP 9401 Wilshire Boulevard, Ninth Floor		I	# 3 # 3			
	3	Beverly Hills, California 90212-2974 Telephone (310) 273-6333		2 PR	Ē			
	4	Facsimile (310) 859-2325			O			
	. 5	Attorneys for Peter A. Davidson, Receiver fo CanAm Capital Corp.	r	4: 07 COUST				
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	8	UNITED STATES	NITED STATES DISTRICT COURT					
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PLLP	10	1	CV11	07298BM	VBI			
SSU	11	PETER A. DAVIDSON, Receiver for CanAm Capital Corporation,) CASE NO		- 			
JES	12	Plaintiff,) COMPLAIN	Γ TO AVOID FRAUDU	LENT			
N N	13	v.) TRANSFERS	s; AIDING AND ABETT FIDUCIARY DUTY; M	ING;			
HO.	14	GERTRUDE BARNHARDT aka GETIE) HAD AND RI		201121			
ERVIN COHEN & JESSUP∟P	15	BARNHARDT; TAURUS FINANCIAL ADVISORS, LTD., an Alberta Corporation,))					
	16	Defendants.			-			
ш	17))	,				
	18							
	19	Plaintiff, Peter A. Davidson, ("Receiver" or "Plaintiff") Receiver for CanAm Capital						
	20	Corporation ("CanAm"), avers as follows:						
	21	JURISDICTION AND VENUE						
	22	1. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1332.						
	23	2. Plaintiff, is the duly appointed and acting receiver for CanAm, having been						
	24	appointed by an order issued by the Los Angeles County Superior Court on January 20, 2011 in						
	25	Case No. BC 453286 The People of the State of California, By And Through The California						
	26	Corporations Commissioner v. CanAm Capital	Corp. et al.					
	27	3. Plaintiff is a citizen of the State of	of California.					
	28							
		13325.16:1261978.1	_1					
	-	COMPLAINT TO AVOID	FRAUDULENT TRA	ANSFERS				

Corporation, with its principal place of business in North York, Ontario, Canada.

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- Defendant, Gertrude Barnhardt aka Getie Barnhardt ("Getie"), is a resident of North York, Ontario, Canada, and, on information and belief, is a Canadian citizen.
 Defendant, Taurus Financial Advisors, Ltd. ("Taurus"), is an Alberta, Canada
- 6. Venue is proper in this district because a substantial part of the events giving rise to the claims avered herein occurred in this district.
 - 7. The amount in controversy exceeds \$75,000.00.

GENERAL ALLEGATIONS

- 8. CanAm is a Nevada corporation. Its primary business address was 1875 Century Park East, Suite 1860, Los Angeles, California 90067.
 - 9. At all relevant times CanAm transacted business within and from California.
- 10. CanAm's business activities included selling membership interests in limited liability companies to investors in California and elsewhere (hereinafter "Investment Funds").
- 11. CanAm has never been licensed or qualified with the California Department of Corporations in any capacity to offer or sell securities.
 - 12. CanAm was the manager of the Investment Funds.
- 13. Jay Jordan Barnhardt, also known as Jay J. Barnhardt and J.J. Barnhardt, hereinafter ("J.J.") is an individual whose last known residence is 1485 North Doheny Drive, Los Angeles, California 90069.
- 14. At all relevant times, J.J. was the President of CanAm and sole shareholder of CanAm.
 - 15. At all relevant times Getie was the sole shareholder and sole director of Taurus.
 - 16. Getie is J.J.'s mother.
- 17. At all relevant times Taurus' offices were maintained at Getie's home in North York, Ontario, Canada.
- 18. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between Getie and Taurus, such that any individuality and separateness between them have ceased, and Taurus is the alter ego of Getie.

- 19. Adherence to the fiction of the separate existence of Taurus as an entity distinct from Getie would permit an abuse of the corporate privilege and would sanction fraud and promote injustice.
- 20. Plaintiff is informed and believes, and based thereon avers, that at all relevant times Taurus was a mere shell and sham without capital assets, save and except those fraudulently transferred to it by J.J. and Getie from CanAm, and was intended and used by Getie and J.J. as a device to avoid individual liability and hide the transfer of CanAm assets.
- 21. Plaintiff is informed and believes, and based thereon avers, that at all relevant times Taurus was inadequately capitalized.
- 22. Beginning in at least February 2004 and continuing through at least December 2009, CanAm, J.J. and their agents, employees and representatives, offered and sold securities in violation of California's Corporate Securities Law ("CSL") to at least 337 investors, raising a total of approximately \$25,000,000.00.
 - 23. Of the investors, at least 182 were California residents.
- 24. CanAm and J.J. offered and sold securities in the form of units of membership interest in a number of limited liability companies. The purported purpose of the offerings was to raise money to provide financing to selected start-up and/or early stage companies, mostly located in Canada.
- 25. CanAm, J.J., and their agents, employees and representatives offered and sold these securities to investors with whom CanAm and J.J. and their agents, employees and representatives had no preexisting business or personal relationship within the meaning of CSL.
- 26. CanAm, J.J., and their agents, employees and representatives offered and sold securities to investors by means of general solicitations in the form of "cold calls".
- 27. The securities offered and sold by CanAm and J.J. were not qualified, pursuant to the CSL, and were not exempt from the qualification requirements of the CSL.
- 28. On February 11, 2009 the California Corporation's Commissioner issued a Desist and Refrain Order ("2009 Order") against CanAm, J.J., and others for violating CSL section

1	25110 by offe	ering and selling securities through the use of general solicitations in the form of
2	"cold calls".	
3	29.	The 2009 Order was served on CanAm, J.J., and others on March 18, 2009.
4	30.	The 2009 Order prohibited CanAm, J.J. and others from offering and selling

- 30. The 2009 Order prohibited CanAm, J.J. and others from offering and selling securities in the form of membership units in limited liability companies in California unless the offering was qualified or exempt from qualification.
- 31. Notwithstanding the 2009 Order, beginning in April 2009 and continuing through at least December 2009, CanAm and J.J., and their agents, employees and representatives offered and sold securities to at least 90 investors, raising approximately \$3,279,000.00. Of those investors, at least 53 were California residents.
- 32. Despite the 2009 Order, J.J. continued to violate CSL section 25110 and the 2009 Order by offering and selling securities through the use of "cold calls", and violating CLS section 25401 by offering and selling securities through misrepresentations and omissions of material fact in the following manner:
 - a. Failing to disclose the 2009 Order to investors;
- b. Using at least \$1,588,000.00 of investor funds J.J. had transferred to CanAm, in contradiction to the purposes stated in the offering materials;
 - c. Using CanAm funds for personal expenses including the following:
 - i. From December 2009 to April 2010, approximately \$200,000.00
 was used to pay J.J.'s personal income taxes;
 - ii. From September 2009 to July 2010, approximately \$716,000.00 was used to fund the CanAm Corp. Defined Benefit Plan for the years 2008, 2009, and 2010;
 - iii. On September 28, 2009, \$12,000.00 was given to Steve Heraty to purchase Santa Rita Partners, Inc.;
 - iv. On March 16, 2009 \$26,000.00 was used to purchase an oriental rug;

1		v. From April 2009 to September 2010, approximately \$574,000.00	
2	·	was paid to American Express for the personal credit cards of J.J.	
3		and his wife for items such as art, college tuition, jewelry, luxury	
4		home furnishings, fixtures, chandeliers, interior decorating, floor	
5		coverings, household furnishings, household appliances, crystal,	
6		landscaping, veterinary services, dining and retail services/goods.	
7	33.	During the period 2005 through 2010, J.J. transferred, or caused CanAm to transfer,	
8	approximatel	y \$1,932,850.00 to Taurus ("Transfers").	
9	34.	At least one fake invoice was created by CanAm and J.J. to make it appear that the	
10	Transfers we	re for research and consulting services.	
11	35.	J.J. caused CanAm to deduct the Transfers on CanAm's tax returns as business	
12	expenses.		
13	36.	Taurus provided no goods or services to CanAm in exchange for the Transfers it	
14	received.		
15	,	FIRST CLAIM FOR RELIEF	
16		(To avoid Fraudulent Transfer –	
17		California Civil Code §3439.04(a)(1) – Against Taurus and Getie)	
18	37.	The Receiver reavers and repleads Paragraphs 1 through 36 inclusive of this	
19	Complaint and incorporates them here in full.		
20	38.	The Receiver has been authorized by the Court appointing him to bring this action.	
21	39.	The Transfers by CanAm to Taurus and Getie were made with the actual intent to	
22	hinder, delay	or defraud CanAm's creditors.	
23		SECOND CLAIM FOR RELIEF	
24		(To avoid Fraudulent Transfer –	
25		California Civil Code §3439.04(a)(2) – Against Taurus and Getie)	
26	40.	The Receiver reavers and repleads paragraphs 1 through 36 and 38 of this	

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Complaint and incorporate them here in full.

41.	The Transfers made by CanAm to Taurus and Getie were made without CanAm
receiving a rea	asonably equivalent value in exchange therefor.

- 42. At the time the Transfers were made by CanAm to Taurus and Getie, CanAm was engaged or was about to engage in a business or a transaction for which the remaining assets of CanAm were unreasonably small in relation to the business or transaction.
- 43. At the time the Transfers were made by CanAm to Taurus and Getie, CanAm, intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay them as they became due.

THIRD CLAIM FOR RELIEF

(To Avoid Fraudulent Transfer -

California Civil Code §3439.05 – Against Taurus and Getie)

- 44. The Receiver reavers and repleads Paragraphs 1 through 36 and 38 inclusive of this Complaint and incorporates them here in full.
- 45. CanAm currently has creditors whose claims arose before the Transfers to Taurus and Getie.
- 46. CanAm received less than a reasonably equivalent value in exchange for the Transfers to Taurus and Getie.
- 47. At the time of the Transfers to Taurus and Getie, CanAm was insolvent or became insolvent as a result thereof.

FOURTH CLAIM FOR RELIEF

(Aiding and Abetting Breach of Fiduciary Duty – Against Getie)

- 48. The Receiver reavers and repleads Paragraph 1 through 36 and 38 inclusive of this Complaint and incorporates them here in full.
- 49. By causing CanAm to make the Transfers to Taurus, J.J. did not exercise the care and loyalty required of corporate directors and/or officers.
- 50. By causing CanAm to make the Transfers to Taurus, J.J. breached his fiduciary duties owed to CanAm.

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- 51. Getie aided and abetted J.J.'s breach of his fiduciary duties to CanAm by providing substantial assistance to J.J. by intentionally accepting or allowing Taurus to accept the Transfers, when Taurus provided no goods or services to CanAm for the funds, so it would appear that the transfers were for legitimate consulting or research services.
- 52. Getie knew that she and Taurus were not entitled to receive the Transfers from J.J. or CanAm.

FIFTH CLAIM FOR RELIEF

(Money Had and Received – Against Taurus and Getie)

- 53. The Receiver reavers and repleads Paragraph 1 through 36 and 38 inclusive of this Complaint and incorporates them here in full.
- 54. Within the last four years at Los Angeles, California, Taurus and Getie became indebted to CanAm in the sum of \$1,386,100.00 for money had and received by Taurus and Getie for the use and benefit of CanAm.
- 55. No payment has been made by Taurus or Getie to CanAm, and there is now owing the sum of \$1,386,100.00, with interest on that amount at the rate of 7% per year from the date of each transfer.

WHEREFORE, the Receiver prays as follows:

- 1. For Judgment avoiding the Transfers to Taurus and Getie;
- 2. For Judgment on the First, Second and Third Claims for Relief against Taurus and Getie, jointly and severally, in the sum of \$1,932,850.00;
- 3. For interest on the funds transferred to Taurus and Getie from the date of the Transfers;
- 4. For Judgment against Getie on the Fourth Claim for Relief for \$1,932,850.00;
- 5. For exemplary damages;

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For Judgment on the Fifth Claim for Relief for \$1,386,100.00, and for interest on 6. that amount at the rate of 7% from the date of the Transfers. For costs of suit; and 7. For such other further relief as the Court deems just and proper. 8. Respectfully submitted, DATED: September 1, 2011 ERVIN COHEN & JESSUP LLP Attorneys for Peter A. Davidson, Receiver for CanAm Capital Corporation

13325.16:1261978.1

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV11- 7298 CBM (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge
=======================================
NOTICE TO COUNSEL
A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

[] Southern Division

Failure to file at the proper location will result in your documents being returned to you.

Subsequent documents must be filed at the following location:

[X] Western Division

312 N. Spring St., Rm. G-8

Los Angeles, CA 90012

411 West Fourth St., Rm. 1-053

Santa Ana, CA 92701-4516

Eastern Division

3470 Twelfth St., Rm. 134

Riverside, CA 92501

Case 2:11-cv-07298-FMO-VBK Document 1 Filed 09/02/11 Page 10 of 13 Name & Address: Byron Z. Moldo (SBN 109652) bmoldo@ecilaw.com ERVIN COHEN & JESSUP LLP 9401 Wilshire Boulevard, 9th Floor Beverly Hills, CA 90212-2974 UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA PETER A. DAVIDSON, Receiver for CanAm CASE NUMBER Capital Corporation, CV11 07298 CBM VBKx PLAINTIFF(S) V. GERTRUDE BARNHARDT aka GETIE BARNHARDT; TAURUS FINANCIAL ADVISORS. **SUMMONS** LTD., an Alberta Corporation, DEFENDANT(S). DEFENDANT(S): Gertrude Barnhardt aka Getie Barnhardt; Taurus Financial Advisors, Ltd., TO: an Alberta Corporation A lawsuit has been filed against you. Within __21 __days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ✓ complaint □ amended complaint □ counterclaim □ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Byron Z. Moldo . whose address is Ervin, Cohen & Jessup LLP, 9401 Wilshire Blvd., 9th Fl., Beverly Hills, CA 90212-2974. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

		Clerk, U.S. District Court
Dated:	SEP - 2 200	By: CHRISTOPHER POWERS
		Deputy Clerk
		(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

CV-01A (12/07)

		
CASE NUMBER		
CV11	07298	CBM VBI
	SUMMONS	
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Clerk, U.S. Di	strict Court	
By:	CHRISTOPHER POW	/ERS
(5	Seal of the Court	ited states Allowed
	case Number COMPLETE STATE OF THE PROPERTY OF T	SUMMONS summons ons on you (not counting the day you receled the federal Rules of Civil Procedure Byron Z. Moldo FI., Beverly Hills, CA 90212-2974 relief demanded in the complaint. You at the Christopher Power Christopher Powe

SUMMONS

CV-01A (12/07)

Case 2:11-cv-07298-FMO-VBK Document 1 Filed 09/02/11 Page 12 of 13 Page

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA ECIVIL COVER SHEET

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Byron Z. Moldo, Ervin Cohen & Jessup LLP 9401 Wilshire Blvd., 9th Fl., Beverly Hills, CA 90212-2974 Tel: (310) 273-6333; Fax: (310) 859-2325 II. BASIS OF JURISDICTION (Place an X in one box only.) III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)					
9401 Wilshire Blvd., 9th Fl., Beverly Hills, CA 90212-2974 Tel: (310) 273-6333; Fax: (310) 859-2325 II. BASIS OF JURISDICTION (Place an X in one box only.) III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)					
(Place an X in one box for plaintiff and one for defendant.) □ 1 U.S. Government Plaintiff □ 3 Federal Question (U.S. PTF DEF					
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Government Not a Party) Citizen of This State To 1 Incorporated or Principal Place of Business in this State	PTF DEF M4 □4				
☐ 2 U.S. Government Defendant	,				
Citizen or Subject of a Foreign Country □ 3 🗹 3 Foreign Nation	□6 □6				
IV. ORIGIN (Place an X in one box only.)					
☐ Original Proceeding State Court Appellate Court Reopened State Court Appellate Court Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multiplication ☐ 7 Appeal to District Under from District Under from Magistrate Judge					
V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)					
CLASS ACTION under F.R.C.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$ 1,932,850.00					
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless dive	reity)				
To recover fraudulent transfers.	131ty.)				
VII. NATURE OF SUIT (Place an X in one box only.)					
OTHER STATUTES CONTRACT TORIS TORTS PRISONER LAB 400 State Reapportionment 110 Insurance PERSONAL PETITIONS 710 Fair Lab					
□ 410 Antitrust □ 120 Marine □ 310 Airplane □ PROPERTY □ 510 Motions to Act					
□ 430 Banks and Banking □ 130 Miller Act □ 315 Airplane Product □ 370 Other Fraud □ 450 Commerce/ICC □ 140 Negotiable Instrument □ 315 Airplane Product □ 370 Other Fraud □ 371 Truth in Lending □ 371 Truth					
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AFTER COMPLETING THE FRONT SIDE OF FORM CY-71, COMPLETE THE INFORMATION REQUESTED BELOW.

FOR OFFICE USE ONLY:

Case Number:

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has If yes, list case number(s):	this action been pre-	viously filed in this court an	d dismissed, remanded or closed? ✓ No □ Yes	
	any cases been prev	iously filed in this court tha	t are related to the present case?	
□ C. F	Arise from the same Call for determination For other reasons wo	or closely related transaction n of the same or substantiall uld entail substantial duplic	ns, happenings, or events; or ly related or similar questions of law and fact; or ation of labor if heard by different judges; or and one of the factors identified above in a, b or c also is present.	
IX. VENUE: (When completing the	following information	on, use an additional sheet if	necessary.)	
			f other than California; or Foreign Country, in which EACH named plaintiff resides. this box is checked, go to item (b).	
County in this District:*			California County outside of this District; State, if other than California; or Foreign Country	
Los Angeles County				
(b) List the County in this District; (☐ Check here if the government, its	California County ou s agencies or employ	ntside of this District; State is every seen in a named defendant.	f other than California; or Foreign Country, in which EACH named defendant resides. If this box is checked, go to item (c).	
County in this District:*			California County outside of this District; State, if other than California; or Foreign Country	
			Canada	
(c) List the County in this District; C Note: In land condemnation ca			f other than California; or Foreign Country, in which EACH claim arose.	
County in this District:*			California County outside of this District; State, if other than California; or Foreign Country	
Los Angeles County		<i>A</i>		
* Los Angeles, Orange, San Bernar Note: In land condemnation cases, use	dino, Riverside, Ve e the location of the	ntura, Santa Barbara, o S tract of land involved	San Luis Obispo Counties	
X. SIGNATURE OF ATTORNEY (OR PRO PER):	ffine	Date September 1, 2011	
or other papers as required by law	v. This form, approve	ed by the Judicial Conferenc	rmation contained herein neither replace nor supplement the filing and service of pleadings to of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed ting the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)	
Key to Statistical codes relating to So	cial Security Cases:			
Nature of Suit Code	Abbreviation	Substantive Statement of	f Cause of Action	
861	НІА	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))		
862	BL	All claims for "Black Lun (30 U.S.C. 923)	g" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969.	
863	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Adamended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))			
863	DIWW	All claims filed for widow Act, as amended. (42 U.S	vs or widowers insurance benefits based on disability under Title 2 of the Social Security S.C. 405(g))	
864	SSID	All claims for supplement Act, as amended.	al security income payments based upon disability filed under Title 16 of the Social Security	
865 RSI All claims for retirement (old U.S.C. (g))			old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42	

CV-71 (05/08) CIVIL COVER SHEET Page 2 of 2